

ORDINANCE NO. 20104-03-2012

AN ORDINANCE AMENDING CHAPTER 7 “BUILDINGS” OF THE CITY OF FORT WORTH BY REVISING SECTION 7-108 TO CHANGE THE STANDARD OF REVIEW TO TRIAL DE NOVO FOR APPEALS FROM APPEALS BOARD DECISIONS; AMENDING CHAPTER 7 “BUILDINGS” OF THE CODE OF THE CITY OF FORT WORTH BY REVISING SECTION 7-222 TO ELIMINATE THE REQUIREMENT TO REMOVE THE FOUNDATION AND CONCRETE SLAB PURSUANT TO A MOVING OR DEMOLITION PERMIT; PROVIDING A PENALTY CLAUSE; PROVIDING FOR ADOPTION BY REFERENCE OF A STATEMENT OF INTENT AND PURPOSE IN ADOPTING THIS ORDINANCE; PROVIDING THAT THE ORDINANCE IS CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 23, 1999, in accordance with state law, the Fort Worth City Council adopted Ordinance 13743, which established the Fort Worth Building Standards Commission and the Fort Worth Appeals Board to provide an administrative process for addressing structures in the City that are subject to violations of City ordinances that impose minimum building standards; and

WHEREAS, under the current ordinance, decisions of the appeals board are subject to judicial review under a substantial evidence standard; and

WHEREAS, the Texas Supreme Court in City of Dallas v. Stewart has indicated that trial de novo standard of review better protects property owners’ constitutional rights; and

WHEREAS, it may not always be necessary to remove foundations after demolition; and

WHEREAS, the Fort Worth City Council wishes to amend Chapter 7 of the Fort Worth City Code to comply with the Texas Supreme Court’s decision in City of Dallas v. Stewart and to eliminate the requirement that foundations always be removed upon demolition.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF FORT WORTH, TEXAS:**

SECTION 1.

Chapter 7 of the City Code of Fort Worth, "Buildings" is hereby amended to revise Section 7-108 to subject appeals from decisions of the appeals board to a trial de novo standard of review. Section 7-108, as amended, shall read as follows:

Sec. 7-108. - Judicial review.

- (a) Any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of the appeals board issued under this article, may appeal the order by filing a verified petition in a Tarrant County Civil District Court.
- (b) The petition must be filed by an owner, lienholder, or mortgagee within thirty (30) calendar days after the effective date of the appeals board order.
- (c) If not timely appealed, the order of the appeals board becomes final as to the owners, lienholders, and mortgagees upon the expiration of thirty (30) calendar days after the effective date of the order.
- (d) The appeal to the District Court shall be by trial de novo.
- (e) Judicial review for proceedings under section 7-77.1
 - (1) The city shall publish an abbreviated copy of the order in a newspaper of general circulation within ten (10) calendar days of the mailing of the order. The order shall include the following:
 - a. The street address or legal description of the property.
 - b. The date of the hearing.
 - c. A brief statement indicating the content of the order ; and
 - d. Instructions stating where a complete copy of the order may be obtained.

- (2) A copy of the order shall be filed in the office of the city secretary.
- (3) If no appeal is taken from the decision of the appeals board within the required period, the decision of the appeals board is, in all things, final and binding.
- (4) Any owner, lienholder, or mortgagee of record jointly or severally aggrieved by a decision of the appeals board may appeal the decision by filing a verified petition in Tarrant County Civil District Court.
- (5) A lienholder does not have standing to bring a proceeding under this sub-section on the grounds that the lienholder was not notified of the proceedings before the appeals board or was unaware of the condition of the property, unless the lienholder had first appeared before the appeals board and entered an appearance in opposition to the proceedings.
- (6) The petition must be presented within thirty (30) calendar days after the date a copy of the final decision of the appeals board is mailed by first class mail, certified receipt requested, to all owners, lienholders, and mortgagees of record.
- (7) The appeal to the District Court shall be by trial de novo.

SECTION 2.

Chapter 7 of the City Code of Fort Worth, "Buildings" is hereby amended to revise Section 7-222 to read as follows:

Sec. 7-222. Completion of work.

Completion of the work pursuant to a moving or demolition permit shall include the removal of any debris caused by such moving or demolition. Moreover the applicant shall repair at his own expense any and all damage to public property.

SECTION 3.

A violation of this ordinance is a misdemeanor punishable by a fine not to exceed Two Thousand Dollars (\$2000.00). Each separate occurrence of a violation or each day that a violation continues shall constitute a separate offense.

SECTION 4.

The Mayor and Council Communication ("M & C") which is presented contemporaneously with this ordinance is hereby expressly incorporated herein by reference for further clarification and explanation of the purposes and intent of the Council in their adoption of this ordinance.

SECTION 5.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City Fort Worth, Texas (1986), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 5.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the Code of Fort Worth which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation under such ordinances, both civil and criminal, whether pending in court or not, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

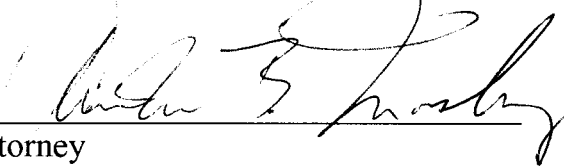
SECTION 7.

The City Secretary of the City of Fort Worth, Texas, is hereby directed to publish the caption, penalty clause and effective date of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Section 52.013, Texas Local Government Code.

SECTION 8.

This ordinance shall take effect following publication.

APPROVED AS TO FORM AND LEGALITY:



City Attorney

ADOPTED: March 20, 2012

EFFECTIVE: April 19, 2012

City of Fort Worth, Texas

Mayor and Council Communication

COUNCIL ACTION: Approved on 3/20/2012 - Ordinance No. 20104-03-2012

DATE: Tuesday, March 20, 2012

REFERENCE NO.: **G-17541

LOG NAME: 12BSC TRIAL DE NOVO

SUBJECT:

Adopt Ordinance Amending Chapter 7 "Buildings" of the City Code to Require Appeals to District Court to Be Trial De Novo for Appeals of Appeals Board Decisions of Building Standards Commission Orders and Removing the Mandatory Requirement to Demolish Foundations Pursuant to Demolition Permits (ALL COUNCIL DISTRICTS)

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance that changes the standard of review to trial de novo for appeals of Appeals Board decisions of Building Standards Commission orders and to remove the existing mandatory requirement that foundations be demolished pursuant to demolition permits.

DISCUSSION:

The Texas Supreme Court's opinion in *City of Dallas v. Stewart* affects municipalities' nuisance abatement efforts including demolition under Building Standards Commission orders. Staff proposes to amend Chapter 7 of the City Code, "Buildings", to comply with the requirements of this important case law. The opinion requires cities that demolish properties under statutory Building Standards Commission orders to provide for a judicial determination of "nuisance". Under the opinion, this may be accomplished through a trial de novo appeal of a demolition order in district court. Therefore, Staff recommends that section 7-108 be amended to require appeals to district court be trial de novo for Appeals Board decisions of Buildings Standards Commission orders. Furthermore, in consideration of *Stewart*, Staff recommends amending section 7-222 to eliminate the current requirement that all foundations be demolished pursuant to demolition permits.

The attached ordinance will be effective upon adoption and publication.

FISCAL INFORMATION / CERTIFICATION:

The Financial Management Services Director certifies that this action will have no material effect on City funds.

FUND CENTERS:

TO Fund/Account/Centers

FROM Fund/Account/Centers

CERTIFICATIONS:

Submitted for City Manager's Office by:

Charles Daniels (6199)

Originating Department Head:

Sarah Fullenwider (8006)

Additional Information Contact:

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